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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 19

NO. 421

D. C. HALL COMPANY, *Petitioner*

vs.

STATE HIGHWAY COMMISSION OF TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE EIGHTH SUPREME JUDICIAL DISTRICT OF TEXAS AT EL PASO, TEXAS

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TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner, D. C. Hall Company, prays that a writ of certiorari issue to review the judgment of the Court of Civil Appeals, Eighth Supreme Judicial District of Texas, entered in the above entitled cause on 16 December 1959, 330 S.W. 2d 904, motion for rehearing denied 13 January 1960, petition for writ of error denied by Supreme Court of Texas 11 May 1960, and motion for rehearing denied by that Court 6 July 1960. Supreme Court of Texas having refused to review, by denial of petition for writ of error, Petitioner has no further recourse in the courts of Texas.

OPINION BELOW

The Supreme Court of Texas having denied petition for writ of error, the opinion and judgment to be reviewed is that of the Court of Civil Appeals, Eighth Supreme Judicial District of Texas, El Paso, Texas, reported at 330 S.W. 2d 904, a true copy of which is attached hereto as Appendix "A".

GROUNDS ON WHICH JURISDICTION IS INVOKED

The jurisdiction of this Court to entertain this petition for certiorari is based on 28 U.S.C. 1257 (2) and (3).

QUESTIONS PRESENTED FOR REVIEW

There are two questions of primary importance here presented.

1. Does the Texas highway vehicle license statute, Article 6675a, R.C.S. of Texas, violate the commerce clause of the Federal Constitution?

This question involves a consideration of the following questions:

(a) Since the highway vehicle license fee is in law an occupation tax, is it, as such, a direct burden upon interstate commerce prohibited by the commerce clause of the Federal Constitution?; and,

(b) Since it is in law an occupation tax, does it result in multiple taxation of the privilege of doing an exclusively interstate transportation business by

motor vehicle which is prohibited by the commerce clause of the Federal Constitution?

2. Shall Petitioner be deprived of its civil and property rights vouchsafed to it under the legislative declaration of Section 16 of Article 6675a and the agreement, compact or treaty formally entered into pursuant to said Section 16 of said statute?

This question involves a consideration of the following questions:

(a) Since Section 16 of Article 6675a of the Texas Statutes nullifies all other sections and provisions of said article and of Texas statutes generally, then as to corporations not domiciled in Texas, but doing an exclusively interstate transportation business as a motor carrier in several states, is not registration or nonregistration of vehicles made to depend solely upon the terms and conditions of the reciprocal agreement (or treaty) between the States?

(b) Is the undertaking of Respondent to require registration of motor vehicles in Texas, although operated by a nondomiciliary of Texas, although having acquired a residence in both Texas and Mississippi, and although the vehicles are admittedly *located* in Mississippi, an attempt to assert extra-territorial jurisdiction which the treaty (reciprocal agreement) was designed to avoid?

(a) Giving effect to the reciprocal agreement or treaty between the states, and the Texas statute authorizing it, and construing the treaty as required by international law, are not the vehicles here in-

volved, registered in Mississippi, registered in the very state where they *must* be registered?

CONSTITUTIONAL PROVISIONS, STATUTE AND TREATY BETWEEN TEXAS AND MISSISSIPPI INVOLVED

Article 1, Section 8, clause 3, of the Constitution of the United States, the commerce clause.

Article 6675a, pertinent Sections 1, 2, 6, 8c and 16, Texas statutes. See Appendix "B".

The Reciprocal Agreement, or treaty, between the States of Texas and Mississippi. See Appendix "C".

STATEMENT OF THE CASE

This action was brought by Respondent under the Texas Declaratory Judgment Act against Petitioner and Braswell Motor Freight Lines, Inc. It arose out of the fact that Petitioner had under lease from Braswell 95 semi-trailers, all of which had been delivered to Petitioner at Jackson, Mississippi, as required by the terms of the lease.

These semi-trailers were admittedly *located* and stationed at Jackson, Mississippi, where Petitioner maintains a residence, a terminal, an office, a large number of employees, and other facilities. From Jackson, Mississippi, the involved semi-trailers are operated exclusively in interstate commerce, and fan out in their normal operation in all directions in the performance of such transportation to New Orleans, Shreveport and other Louisiana points; from Jackson

to Shreveport and Fort Worth and Dallas, Texas; from both Jackson, Mississippi, and New Orleans to Tulsa and Oklahoma City, Oklahoma, and to Memphis, Tennessee.

Braswell Motor Freight Lines, Inc., is not here involved, judgment of the trial court being for Braswell, it being dismissed with its costs and no appeal prosecuted by Respondent from such judgment.

As to Petitioner, Respondent contended that although said semi-trailers were located in Jackson, Mississippi, from which point they are operated and to which point they always return, that they must, nevertheless, all be licensed in Texas under the provisions of Article 6675a(2) of the Texas statutes.

Petitioner contended, among other things, that it was relieved of the requirement of Article 6675a(2) by reason of the provisions of Article 6675a(16); that the State of Texas had entered into a reciprocal agreement or treaty with the State of Mississippi pursuant to the provisions of said Section 16 of said Article, and that whether it was required to license said vehicles in Texas was dependent entirely upon the provisions and requirements of said treaty between said States; that Respondent had in fact so interpreted said agreement or treaty; that Petitioner had in fact licensed said vehicles at the very place where it was required, and where it must under the provisions of said treaty license them; that said agreement or treaty must be construed, and must be construed according to the principles of international law; that

the case may not be determined upon the internal law of the State of Texas.

Petitioner holds a certificate of convenience and necessity issued by the Interstate Commerce Commission pursuant to Interstate Commerce Act, Part II, and a permit from each involved state authorizing use of its highways in the transportation of commodities moving in interstate commerce.

Petitioner also contended that the so-called license or registration fee is in fact and in law an occupation tax levied upon the privilege of doing an interstate transportation business in the State of Texas; that as such (occupation) tax it was a direct burden upon interstate commerce and also constituted a multiple burden upon such commerce.

The case was tried upon an agreed statement of facts together with a limited amount of oral evidence. The trial court's judgment was that the involved vehicles must be registered in Texas, thus denying the aforesaid contentions of your Petitioner. The Court of Civil Appeals affirmed, and the Supreme Court refused writ of error—no reversible error.

STAGE OF PROCEEDINGS AT WHICH FEDERAL QUESTIONS WERE RAISED IN STATE COURTS

The questions presented for review were raised in the trial court. Original Answer, Tr. 22-28, 33-36; Motion for rehearing, Tr. 39-41; Motion for additional findings of fact and conclusions of law, Tr. 45, paragraphs 8, 9, 10, 11, Tr. 46, paragraphs 14 to 18 inclusive.

The questions were raised in Court of Civil Appeals by points I, II, III, IV, V, VII, and argument was presented in said Court in relation to each point, with appropriate reference to assignments of error as contained in Motion for Rehearing in the trial court. See Petitioner's brief as filed in Court of Civil Appeals.

All questions presented were carried forward in Petitioner's application for writ of error to the Supreme Court of Texas. See Petitioner's application for writ of error and motion for rehearing.

REASONS FOR GRANTING THE WRIT

1. The Supreme Court of Texas has clearly and specifically held that the so-called license fee here under consideration is an occupation tax. *Payne vs. Massey*, 145 Tex. 237, 196 S.W. 2d 493; *County of Harris vs. Shepperd*, 291 S.W. 2d 721.

As an occupation tax it is a direct burden on interstate commerce; and,

A multiple burden on such commerce prohibited by the commerce clause of the *Federal Constitution, Article 1, Section 8, clause 3. Spector Motor Lines vs. O'Conner*, 340 U.S. 602, 95 L.Ed. 573; *Railway Express Agency vs. Virginia*, 347 U.S. 359, 98 L.Ed. 757.

2. With the mushrooming of motor vehicle transportation by road for hire and the fact that such transportation has spilled over state lines as though they did not exist, especially since the Motor Carrier

Act of 1935 (*49 U.S.C.A. 301*, et seq.), reciprocal agreements between the states relating to licensing of vehicles used in over-the-road transportation for hire has become the order of the day. Most states have such agreements with most other states.

Judging from the Texas agreements (see Exhibit D-1) most of such agreements are formal written instruments. A few states apparently have unilateral statutes providing for reciprocity.

Section 16 of Article 6675a of the Texas statutes (see Appendix "C") voids all other state laws relating to licensing of such vehicles and makes the requirement for licensing dependent solely on the Texas-Mississippi reciprocal agreement. Texas has similar agreements with practically all, if not all other states. (Exhibit D-1).

These agreements are compacts or treaties between sovereign states requiring application of the principles of international law—the conflict of laws.

They clearly involve that area of free commercial intercourse protected by the commerce clause of the Federal Constitution.

3. The issues here are of tremendous importance to a mighty industry of most recent origin and growth. This entire industry is seriously affected by such issues.

4. We cannot find that your Honorable Court has ever passed upon the issues here presented, although interstate commerce is vitally affected.

5. The questions are of such importance to the jurisprudence of the nation in relation to the protection of that area of free trade protected by the commerce clause that this writ should be granted and this Court speak out on the subject.

WHEREFORE, Petitioner prays that this application be granted and writ of certiorari issue.

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SUPPORTING BRIEF IS ATTACHED

SUPPORTING BRIEF

As to Petitioner's exclusively interstate operations the Texas license statute, Article 6675a, Revised Civil Statutes of Texas, violates the commerce clause of the Federal Constitution, the tax there levied being a direct burden on interstate commerce, and the reciprocal agreement, compact or treaty as enforced results in multiple taxation on the privilege of doing such exclusively interstate transportation business.

Respondent seeks in this suit to subject vehicles which are operated exclusively in interstate commerce (Tr. 9, paragraph 8) to a tax which the Supreme Court of Texas has heretofore held to be an occupation tax "exacted for the privilege of carrying on a particular occupation or business." *Payne vs. Massey*, 145 Tex. 237, 196 S.W. 2d 493; *County of Harris vs. Shepperd*, 291 S.W. 2d 721. As an occupation tax the case here presented falls squarely within the pattern and decision of your Honorable Court in *Spector Motor Lines vs. O'Conner*, 340 U.S. 602, and *Railway Express Agency vs. Virginia*, 347 U.S. 359, and is ruled by those cases.

Petitioner operates in six states, that is, Texas, Mississippi, Oklahoma, Louisiana, Tennessee and Arkansas (SF 10, 84-98). It has 109 vehicles registered in Texas, 106 in Mississippi, 10 in Oklahoma, 45 in Louisiana, 9 in Tennessee (SF 10-11). None are registered in Arkansas because Petitioner does no business in Arkansas, merely using the highways of that state in reaching its various points of destination.

Petitioner operates 3,837 route miles, of which only 711 are in Texas (SF 10; 25, par. 33).

The involved vehicles have no fixed situs except such as is fixed by management "based upon and determined by the requirements of the carrier transportation business in maintaining the necessary distribution of equipment at the points where it is needed to enable the carrier to meet the requirements of its interstate certificates that such carrier shall 'render reasonably continuous and adequate service to the public in pursuance of the authority herein granted, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate'." (See the first "further ordered" paragraph of the certificate issued by the Interstate Commerce Commission shown at SF 98). Petitioner operates over routes between Fort Worth, Texas, and New Orleans, Louisiana (SF 85); between Memphis, Tennessee, and Monroe, Louisiana (SF 87); between Shreveport, Louisiana, and Oklahoma City, Oklahoma (SF 87); between Shreveport, Louisiana and Tulsa, Oklahoma (SF 88); between Jackson, Mississippi, and Memphis, Tennessee (SF 89); between Baton Rouge, Louisiana, and McComb, Mississippi (SF 89); between Jackson, Mississippi, and New Orleans, Louisiana (SF 89); between Shreveport, Louisiana, and Jackson, Mississippi (SF 92); between Oklahoma City, Oklahoma, and Fort Worth, Texas, via Gainesville and Denton, Texas (SF 92); between Oklahoma City, Oklahoma, and Dallas, Texas, via Ardmore, Oklahoma, and Denton, Texas (SF 92-93); between Dallas, Texas, and Shreveport, Louisiana (SF 95).

The semi-trailers are operated into, out of and through Jackson, Mississippi, with greater frequency than any other point on Petitioner's lines (Tr. 49, par. 9); such vehicles are never in the State of Texas more than three or four days at any one time, and as a general rule are not in the State of Texas more than 48 hours at any one time (Tr. 49, par. 11).

That the tax is an occupation tax is shown by the holding of the Supreme Court of Texas in *Payne vs. Massey*, 145 Tex. 237, 196 S.W. 2d 493, which decision is reaffirmed by the Supreme Court in *County of Harris vs. Shepperd*, 291 S.W. 2d 721. In *Payne vs. Massey* the court said that "*A license fee is the sum exacted for the privilege of carrying on a particular occupation or business* and it may be imposed either for regulation under the police power or for revenue or for both regulation and revenue." In any event there is a clear-cut statement that the tax is an occupation tax. It is the sum exacted of Petitioner here "for the privilege of carrying on a particular occupation or business," or, in other words, the business of transportation as a common carrier exclusively in interstate commerce. As such it violates the commerce clause of the Federal Constitution.

We think there can be no doubt at all about the tax being an occupational tax, nor is there any doubt that it was levied for revenue purposes only. It is levied neither under the police power as a regulatory measure, nor as compensation for the use of the highways.

In the *Payne vs. Massey* case, supra, the Supreme Court made two points which are pertinent here.

First, that taxicabs are required to register but that as to such registration the state has pre-empted the field, and that the only difference which the taxicab made of the use of the highways and streets "is no different from that of the ordinary user, except perhaps it *is more frequent*" (page 496). When like vehicles are required to pay like fees and when the frequency of the use of the highways has nothing to do with the tax which is based solely upon the specific factors set out in the statute, then it cannot be said that the tax is levied for the purpose of requiring highway users to contribute their fair share to the construction and maintenance of such highways. If the fee bore some reasonable relation to the extent of the use, which it does not, then it might be said that the fee was levied to require a fair contributive share of the burden of providing the highways. That, however, is not so, as is clearly shown by the *Payne vs. Massey* case.

The second point made in the *Payne vs. Massey* case is that the first determination to which we have just referred is correct, because Article 6698 having to do with municipal regulation of vehicle registration also pre-empts the field and requirement for municipal registration is prohibited, the court saying "consequently the city is attempting to invade the field which under Article 6698 is pre-empted and restricted to the state."

Looking at Article 6698 we find among other things the following language:

"Nothing herein shall in any wise authorize or

> empower any county or incorporated city or town in this state to levy and collect any *occupation tax or license fees* on motorcycles, motor vehicles or motor trucks."

There again we are fortified in our contention that the license fee is in law an occupation tax, because Article 6698, which the court said pre-empts the field with reference to the requirement for registration of motor vehicles, directly calls it an occupation tax.

County of Harris vs. Shepperd, 291 S.W. 2d 721, is the later and more authoritative case by the Supreme Court of Texas, but we do not overlook the fact that in *Payne vs. Massey* the Supreme Court in citing Blashfield's Cyclopedia of Automobile Law and Practice, did use some language from that citation to the effect that the license or registration fee is "in the nature of a license or toll for the use of the highways of Texas." The *County of Harris vs. Shepperd* case got clear away from any such holding; however, so that there may be no confusion whatsoever about that, and in connection with the quote from Article 6698 of the Texas statute, we now point to the fact that even if the license fee could possibly be considered a highway use fee, such fact is wholly unimportant in this proceeding, because if it is such a tax or fee, then the reciprocal agreement or treaty between the states has substituted the fuel tax for the license fee tax. Section VII of the Reciprocal Agreement (See Appendix "C") provides as follows:

> "It is further provided that, as to each individual operator or carrier, this agreement and

> the extension of reciprocity under the terms hereof is based upon the requirement that such operator or carrier will purchase, or pay the state tax upon, a sufficient amount of gasoline or other fuel to propel their vehicles for the number of miles travelled upon the highways of state granting reciprocity, and, as to the state of Mississippi, is based upon compliance with the terms and provisions of House Bill No. 128 of the Mississippi Laws of the Regular Session of 1946."

At this point we had also as well demonstrate the correctness of the holding of the Supreme Court that the license fee or tax is an occupation tax not levied for regulation. The highway regulatory (police) statute is contained in Articles 827a and 827b of the Penal Code of Texas. Article 827b, taking note of the provisions of Section 16 of Article 6675a, provides that: "Provided further that nothing in this act shall affect the rights or status of any vehicle owner under any reciprocity agreement between this state or any other state or foreign country."

Articles 827a and 827b are the purely regulatory statutes pertaining to the highways and have nothing to do with the registration or licensing statute, but nevertheless take note of the provision for reciprocal agreements or treaties between the states relating to licensing and registration.

As indicated in the beginning, this case is ruled by *Spector Motor Service vs. O'Conner*, 340 U.S. 602, 95 L.Ed. 573, and *Railway Express Agency vs. Virginia*, 347 U.S. 359, 98 L.Ed. 757 (1954). The *Spector* case involved the validity of a tax imposed on the franchise

of Spector Motor Service which was a corporation chartered and domiciled in the State of Missouri but performing a motor transportation service exclusively in interstate commerce between Missouri and various other states, including the State of Connecticut. Connecticut levied a tax on Spector's franchise to do business. Spector contested the tax on the ground that it constituted an unlawful burden on interstate commerce. The court stated the question involved as "whether the application of the tax to petitioner violates the commerce clause of the Federal Constitution."

The highest court of the State of Connecticut had ruled that,

> "The tax is then a tax or excise upon the franchise of corporations for the privilege of carrying on or doing business in the state, whether they be domestic or foreign."

The court said that even though the financial burden on interstate commerce might be the same, the question of whether a state may validly make interstate commerce pay its way "depends first of all upon the constitutional channel through which it attempts to do so." The Court cites *Freeman vs. Hewit*, 329 U.S. 249, 91 L.Ed. 265, which case we have used in drawing the distinction as to the constitutional channel employed.

The court, going on to point out that the states had delegated to the United States the exclusive power to tax the privilege to engage in interstate commerce by

reason of the commerce clause of the Federal Constitution, and also saying that the court had struck down under the commerce clause state taxes upon the privilege of carrying on a business that was exclusively interstate in character, held that the tax was an unconstitutional burden on interstate commerce.

In *Railway Express Agency vs. Virginia*, 347 U.S. 359, 98 L.Ed. 757, the State of Virginia had undertaken to levy a license, privilege or occupation tax, and the court said that;

> "We think we can only regard this tax as being in fact and effect just what the Legislature said it was—a privilege tax, and one that cannot be applied to an exclusively interstate business."

The Supreme Court of Texas, as pointed out, has said that our motor vehicle registration tax is an occupation tax and it must fall under both the *Spector* and the *Railway Express* case. As undertaken to be applied in this case the registration tax is "one that cannot be applied to an exclusively interstate business." All vehicles here involved are operated exclusively in interstate commerce. (Tr. 49).

The involved vehicles are used exclusively in interstate commerce in the States of Texas, Oklahoma, Louisiana, Mississippi and Tennessee, also using Arkansas highways in such transportation. Petitioner is necessarily required to locate and maintain vehicles in all of these states, except Arkansas, and it does so. Texas has reciprocity agreements with each and all of the states just mentioned (Ex. D-2, S.F. 153).

Clearly f Texas can require the involved semi-trailers to be registered in Texas under the reciprocity agreement, just as clearly can Mississippi make the same requirement. With equal clarity Oklahoma, Louisiana, Tennessee and Arkansas can require these semi-trailers, and for that matter *all* of Petitioner's equipment, to be registered in each of those states.

Under the court's judgment such multiple registration and multiple taxation *is no threat but a reality.*

We take the following very pertient language from *Wisconsin-Michigan P. L. Co. vs. Calvert*, 347 U.S. 157 (a case from Texas):

> "It would 'permit a multiple burden upon that commerce,' Joseph v. Carter & Weekes Stevedoring Co., supra. (330 U.S. at 429); for if Texas may impose this 'first taking' tax * * *, then Michigan and the other recipient states have at least equal right to tax the first taking or 'unloading' from the pipeline of the same gas when it arrives for distribution. Oklahoma might then seek to tax the first taking of gas as it crossed into that state. The net effect would be substantially to resurrect the customs barriers which the commerce clause was designed to eliminate. 'The very purpose of the commerce clause was to create an area of free trade among the several states. That clause vested the power of taxing a transaction forming an unbroken process of interstate commerce in the Congress, not in the states.' McLeod v. J. E. Dilworth Co., 332 U.S. 327, 330 331, 88 L.Ed. 1304, 1307."

As an occupation tax it is a direct burden upon interstate commerce. Moreover, if the State of Texas

can levy such tax, then certainly the tax may be levied in each of the other states in which Petitioner operates, and it becomes a multiple burden upon interstate commerce. In either event, it cannot be sustained.

Petitioner's rights must be determined solely upon the application of the principles of international law —or the conflict of laws—and not upon the internal law of the State of Texas as the State Courts did.

Petitioner has raised this question and the following propositions in the trial court and all other courts of the State of Texas only to be ignored so far as their determination is concerned, other than the one statement by the Court of Civil Appeals to the effect that the reciprocity agreement, compact and treaty between the States of Texas and Mississippi here involved did not possess the "dignity" of a treaty or compact.

Section 16 of Article 6675a nullifies all other sections and provisions of said article of said statute, and as to corporations not domiciled in Texas but doing an exclusively interstate business as a motor carrier in several states, registration or non-registration of motor vehicles for use of the highways is thus made to depend solely upon the terms and conditions of said agreement, compact and treaty. The agreement was entered into pursuant to Section 16 of Article 6675a. The agreement is set out in Appendix "C" hereof. That this contention is correct is shown by the language of Section 16 of Article 6675a which opens with

the language "in addition to and regardless of the provisions of *this act or any other act.*"

Then in Article 827b of the Penal Code of Texas, last sentence, it is "provided further, that *nothing in this act shall affect the rights or status* of any vehicle owner under the reciprocal agreement between this state and any other state or foreign country."

The reciprocal agreement as entered into by the Texas State Highway Engineer pursuant to said Section 16 with the proper authorities of the State of Mississippi made *location* of the vehicles for 30 days, coupled with an established place of business, *conclusive* factors as to the state of registration. Such agreement is fully authorized by Section 16 of Article 6675a. The parties hereto had stipulated, and the court found that the vehicles here involved are all *located* and stationed in the State of Mississippi, as well as the fact that Petitioner has a large terminal, repair facilities, and a manager and 29 employees at Jackson, Mississippi.

The semi-trailers, licensing of which is here involved, operate exclusively in interstate commerce, and are licensed in the State of Mississippi where they are *located*, and where they must be licensed and registered under the very terms and requirements of the treaty between the States of Texas and Mississippi. The Court of Civil Appeals erroneously held, however, that the reciprocal agreement, compact or treaty lacks the "dignity" of a treaty, in spite of all of its formalities (See Appendix "C"). That holding is in direct conflict with the holding of your Honorable

Supreme Court in *Virginia vs. Tennessee*, 148 U.S. 518, 37 L.Ed. 537, *Green vs. Biddle*, 8 Wheat. 1, 5 L.Ed. 547, *Marlotts Case*, 11 Pet. 1, 9 L.Ed. 609. This holding of the Court of Civil Appeals influenced its determination of this proceeding, resulting in a determination (1) based on the internal law of the State of Texas, and (2) resulted in its refusal to consider the reciprocal agreement and determine the rights of your Petitioner solely upon said agreement, compact, or treaty. Petitioner has simply been deprived of its statutory rights.

The question here presented is very closely related to the first contention or question presented herein, that the Texas registration or licensing statute, Article 6675a, is unconstitutional as violative of the commerce clause of the Federal Constitution. Actually Counsel is of the opinion that Section 16 of Article 6675a authorizing such reciprocal agreements as here involved was intended to allow the State Highway Engineer of the State of Texas to negotiate these agreements, compacts and treaties with the view of eliminating the objection that said statute violates the commerce clause of the United States. Counsel is also of the opinion that when said agreement, compact or treaty is construed, and is properly construed, that thereunder Petitioner would not be required to register the involved vehicles within the State of Texas, and such a holding would then eliminate the constitutional infirmity of Article 6675a as being violative of the commerce clause of the Federal Constitution.

If, however, this agreement between these sovereign

states is continued to be ignored and is given no force or effect, as it seems the Legislature clearly intended, then it seems to us that there can be no question but what Article 6675a must be held to be unconstitutional as violative of the commerce clause. Certainly a direct tax upon the occupation and privilege of doing an exclusively interstate business is a direct burden upon interstate commerce, and certainly the decision of the Texas courts results in multiple taxation of interstate commerce.

With the mushrooming of motor carrier operations throughout the United States where such carriers are authorized by the Interstate Commerce Commission to, and do operate in many states, crossing state lines as though they did not exist, the international aspect and that of interstate commerce has become highly significant. The issues here presented not only deserve but require consideration by your Honorable Court. For instance, the Petitioner here operates in five states, and in addition crosses the State of Arkansas without rendering any service therein, and maintains terminals, terminal managers and a great number of employees in the States of Louisiana, Oklahoma, Mississippi, Tennessee and Texas.

Section 16 opens with the words "In addition to and *regardless* of the provisions of this Act," etc. The reference to "this Act" is to the licensing requirement of Article 6675a. The words "regardless of the provisions of this Act" recognize the international character of the problem being dealt with. Registration was thus made to depend solely upon the compact author-

ized to be entered into between sovereign states. It thus became the compact—the reciprocal agreement—to which the states must look for their right to require registration of a motor vehicle when operated exclusively in interstate commerce as a carrier. The compact likewise fixed the rights of private individuals. It is the compact—the reciprocal agreement—to which individuals may and must look as fixing their rights.

Thus the international aspect clearly appears. The Legislature so said, for again witness its words "*regardless* of the provisions of this Act or any other Act." Under this language clearly internal law of the state was not to control. Clearly the international compact between sovereign states — the reciprocal agreement—was to control—and it does control.

The Legislature then used the words "relating to the operation of motor vehicles over the public highways of this state by nonresidents." Admittedly if it had stopped there Respondent would have a plausible argument for the position it must sustain, which is that for reciprocity to apply a person must be a *resident* of one state, but it must also be a *non-resident* of the other. But it did not stop there, for Section 16(c) providing a penalty says "Any person owning or operating a vehicle not registered in this state, in violation of the terms of any agreement made under this section." etc. Under the very agreement made under this section, the vehicles being located in Mississippi, not just thirty days but permanently, and Petitioner having an established place of business in Mississippi, the involved vehicles *must* be registered

in Mississippi or else the vehicles would be operated in this state, and in Mississippi, in violation of the agreement made under this section. Clearly, the language of Section 16 taken in context and considered in relation to the Reciprocal Agreement means only registration in one state or the other, depending on *location*—or to put it negatively, not both states. It goes without saying that Section 16 must be construed in its entirety.

The Legislature recognized both the international character of the problem and also the fact that corporations, like individuals, may have only one domicile, but may have several commercial residences for certain purposes. It also recognized the fact that it was dealing with a problem affecting interstate commerce and with an industry which sprawled across state lines as though they did not exist in meeting the needs of the commerce of the state and of the United States.

So the Legislature resolved this problem by continuing in the same sentence of Section 16, saying that Respondent, acting through the State Highway Engineer, "is hereby authorized to enter into agreements with duly authorized officials of other states *exempting the residents* of such other states using the public highways of this state from the payment of registration fees," etc. This is a clear answer. Petitioner is a *resident* of Mississippi. The trial court so found (Conclusion of law, par. 5, Tr. 34; par. 4, Tr. 50). The quoted language clearly exempts Petitioner as a resident of *Mississippi*.

This is a matter of such importance and resulting consequence that this Court should pass upon it. It is not within the province of courts to rewrite clear positive legislation. That is the effect of the opinion of the Court of Civil Appeals.

The statute is clear and emphatic. What did the State Highway Engineer do in the Reciprocity Agreement entered into pursuant to the terms of the statute? Certainly under the statute registration or non-registration must be determined *solely* upon the basis of the Agreement which the State Highway Engineer entered into.

Turning then to the agreement (SF 43), paragraph I reads:

> "It is provided that this agreement applies only to the requirement for licensing of vehicles, operated in interstate commerce exclusively, and shall not relieve any non-resident operator or owner of such vehicles from complying with all laws and regulations exercised by either state under their respective statutes for common and contract carriers; *and shall apply only to bona fide residents of the herein contracting states. It is further provided that no non-resident of Texas or Mississippi shall avail themselves of the benefits of this reciprocal agreement by the licensing of their vehicles in either state without having become a bona fide resident thereof.*" (Emphasis added)

Paragraph IV (SF 45) provides:

> "PRIVATE COMMERCIAL TRUCKS AND COMMON OR CONTRACT CARRIERS

"Owners and operators of trucks, truck-tractors, trailers, or semi-trailers used for the transportation of the actual property of the owner of such vehicles and for the transportation of property for compensation and or hire who are legal and bona fide residents of Texas or Mississippi and who have legally registered such vehicles in the state of which the owner is a resident and have complied with all laws regulating common and contract carriers and secured permits from the Texas Railroad Commission and from the Public Service Commission of Mississippi are granted full reciprocity in the lawful use of the highways of the other state party to this agreement without payment of motor vehicle license fees in such other state; *provided, however*, that if any truck, truck-tractor, trailer, or semi-trailer is located in the non-resident state party to this agreement for thirty (30) or more consecutive days it *shall be conclusively presumed that the location of the vehicle has been changed* and the owner or operator shall be required to register such vehicle in the non-resident state. It is further provided that any truck, truck-tractor, trailer, or semi-trailer which is registered in one state *if moved to and located in the other state for thirty (30) or more consecutive days shall be required to be registered in the state to which moved.*" (Emphasis added)

Petitioner registered the involved semi-trailers in Mississippi (SF 7). That was exactly the place where Petitioner was required to register those semi-trailers under the very terms and requirements of the reciprocity agreement, and Petitioner is therefore entitled to the benefit of said agreement and under no require-

ment to register the semi-trailers in Texas.

In the proviso portion it is provided in language as clear as a bell that irrespective of residence of the owner or operator that "if any truck, truck-tractor, trailer or semi-trailer is *located* in the non-resident state party to this agreement for thirty (30) or more consecutive days *it shall be conclusively presumed* that the *location* of the vehicle has been changed and the owner *or* operator shall be required to register * * *," etc.

In other words, under the clear language of the Agreement, the *situs* of the vehicle *determines* the *state of registration*. Situs, that is, "location" of the vehicle determines residence of the owner as to that vehicle for purpose of registration under the agreement. That is certainly true as to Petitioner, a non-domiciliary corporation, doing an interstate business.

The situs of the trailers here involved is Jackson, Mississippi. As shown herein the lease so provided (SF 32, bottom of page). There is good managerial and operative reasons therefor (SF 23, par. 30; SF 24, par. 31; SF 25, par. 32, 33 and 35), and the Respondent agrees in the stipulated facts that physical delivery was made to Petitioner in Jackson, Mississippi, and that they are "*stationed*" there (SF 10, par. 34), "Mississippi."

Moreover, the reciprocal agreement in fixing a "conclusive" presumption as to *location of vehicles for registration purposes* also establishes "residence" for the owner or operator for purposes of said agree-

ment as to registration of the vehicle. In any event, as to such vehicle, where as here a corporation has established "residence" in both Texas and Mississippi (Tr. 34, par. 5), such a resident owning *vehicles "located"* in the other state *must* register in the state of *"the location of the vehicle,"* and having done so, have the benefit of "full reciprocity" with the other state. *Under the foregoing requirements of the proviso there are no exclusions except as to non-residents of each state, particularly as applied to Petitioner—a non-domiciliary.*

That is just the plain language of the agreement.

As to passenger cars, the Respondent has so interpreted the reciprocity agreement. The Respondent has published and distributes a booklet entitled "Summary of Reciprocity Agreements between Texas and the Other States." (See Exhibit D-1, SF 153, under Mississippi). There the Respondent, in Section III, says: "Establishment of domicile *or* business, *or* gainful employment for 30 tays deemed residence." The language of Section IV is that if the (vehicle) semi-trailer "is *located* in the non-resident state party to this agreement, it shall be *conclusively* presumed that the location (interpolated Petitioner's residence as to the vehicle) has been changed * * *." This latter language simply fixes "residence" for purpose of registration the same as does Section III. The two sections must be interpreted exactly alike. That they must be and are interpreted alike is certain and sure because Section III does not undertake to change "residence" of a *person* unless there has been an actual change of

"*domicile.*" It is the "establishment of a * * * place of abode while gainfully employed." As put in the summary, quoted above, "establishment of * * * business or gainful employment."

That all of this is true is emphasized by the "further provided" last sentence of Section IV. It is not mere duplication or repetition.

Under this language a person, or corporation as here, may be, and is, a resident or a non-resident of a state, in fact as well as law, and as to particular vehicles *depending entirely upon where the vehicle is located.* And this is true irrespective of the fact that the corporate defendant here may and does have a number of residences. But residence for purposes of registration is determined and controlled entirely by "location" of the vehicle. That construction is necessarily required as to this non-domicilary, for Texas can assert no extra-territorial jurisdiction. The state where property of a foreign corporation is located exercises complete jurisdiction, including the right of taxation. As to that property (vehicles) located in Mississippi, Texas has no jurisdiction. As to that property Texas is a complete stranger. As to that property, the vehicles here, when operating exclusively in interstate commerce, as it is, both by agreement of the parties and by specific Court finding, Petitioner is a non-resident of Texas and vice-versa. Otherwise comity is destroyed and you have not only conflict of law but a clash of laws which is unthinkable in our system of law. Both jurisdiction and comity deny to Texas the authority which it here asserts but does not

have. The vehicles here involved are all "located" in Mississippi (SF 32, par. 3; SF 10, par. 34).

The reciprocity agreement contains no exclusion except as to persons or corporations residents of neither state. The veritable truth is that the reciprocity agreement provides for just such situations as here presented. The vehicles are not required to be registered in both states—just the one where located.

If Section 16 of Article 6675a and the reciprocity agreement mean anything, that is what they mean. Only Section 16 of the statute has anything to do with the issue. The reciprocity agreement alone determines registration or non-registration. That much is inescapable unless it was the design of the Texas Courts to rewrite the legislation and reframe the agreement. Neither is within the prerogative of the Court. If the design was to rewrite, and that is surely the result, it was ill advised, because it is thus brought within the condemnation of the commerce clause of the Federal Constitution—a design which Section 16 was intended to eliminate.

The Court must take into consideration in its determination of this case the fact, as well as the legal proposition, that agreements between states of the Union, such as the formal Reciprocal Agreement between Texas and Mississippi which is in evidence here, do not fall into the field of domestic law, and *certainly and surely not into the internal laws of the signatory governments.* To us this seems basic to our federal system. The United States is, of course, sovereign only as to the powers actually surrendered to it by the

several states, while each state of the Union is sovereign as to all powers reserved. *Chisholm vs. Georgia*, 2 Dallas (U.S.) 419, 1 L.Ed. 440. As to all powers reserved in the states they are independent foreign states each as to the other except for federal purposes. *Rhode Island vs. Massachusetts*, 12 Pet. 657, 9 L.Ed. 1233, 1259. The principles of international comity, that is, the principles of international law, apply as between states. *81 C.J.S. 896*, States, par. 8; *Robinson vs. Norato*, 71 R.I. 246, 162 A.L.R. 362, 368, 370.

Thus the rights of a domiciliary of one state of the United States within the territory of another are not to be determined on the basis of the laws and decisions of either state. The rule of decision is one of international character. *Marlatts Lessee vs. Silk*, 11 Peters 1, 9 L.Ed. 609, 617. This is more especially true when the question to be decided here arises under a compact, that is, the reciprocity agreement between the states of Texas and Mississippi.

Truck reciprocity instruments are generally referred to as agreements, as it is so referred to throughout the record in this case. We should perhaps, therefore, discuss briefly the meaning of the word "agreement" for the purpose of undertaking to determine whether or not such an agreement is synonymous with compact or treaty. The Supreme Court of the United States has held an agreement between two states to be a contract and that it is synonymous with compact; *Green vs. Biddle*, 8 Wheat. 1, 5 L.Ed. 547, 510; and has further held that the words "compact" and "agreement" are the same in meaning except

that an agreement is less formal in nature. *Virginia vs. Tennessee*, 148 U.S. 518, 37 L.Ed. 537, 543.

As to whether or not the reciprocity agreement is a compact or agreement between states and governed by the principles of international law is definitely determined in *Virginia vs. Tennessee*, 148 U.S. 518, 37 L.Ed. 537, 543. The Supreme Court of the United States was there considering an agreement between Virginia and Tennessee fixing their common boundaries. The court said this:

> "The terms 'agreement' or 'compact' taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects; to those to which the United States can have no possible objection or form any interest in interferring with, as well as to those which may tend to increase and build up the political influence of the contracting states, so as to encroach upon or impair the supremacy of the United States or interfere with their rightful management of particular subjects placed under their entire control.'

The court after further discussion then asks the question:

> "If then, the terms 'compact' or 'agreement' in the Constitution do not apply to every possible compact or agreement between one state and another, for the validity of which the consent of Congress must be obtained, to what contracts or agreements does the Constitution apply?"

Clearly the court as to this point said that all agreements between states, either written or oral, are in-

cluded within the terms "agreement" or "compact," and there is no difference in the meaning of these terms because the court went on to say,

> "Compacts or agreements—and we do not perceive any difference in the meaning, except that the word 'compact' is generally used with reference to more formal and serious engagements than is usually implied in the term of 'agreement' —cover all stipulations affecting the conduct or claims of the parties."

The requirement of the Federal Constitution that compacts between states must be sanctioned by Congress has no application to truck reciprocity agreements.

Again reverting to *Virginia vs. Tennessee*, the court says in reference to the provisions of the Constitution requiring approval that,

> "Looking at the clause in which the term 'compact' or 'agreement' appears, it is evident that the prohibition is directed to the formation of any combination tending to increase the political power in the states, which may encroach upon or interfere with the just supremacy of the United States."

In *Barron vs. Baltimore*, 7 Pet. 249; 8 L.Ed. 672, 674, the United States Supreme Court held that if one state enters into a compact with another "for political purposes" such a compact interferes with the general purposes of the Constitution. Is a reciprocity agreement between two states, such as Texas and Mississippi, a compact "for political purpoes"? The test is

whether or not it forms a combination for the purpose of increasing the political powers of the states.

Truck reciprocity agreements, such as here involved are not for political purposes and do not require Congressional approval. *Bode vs. Barrett*, 344 U.S. 583, 97 L.Ed. 567, 571.

That the rights of the parties here must be determined on the basis of international law and not the domestic law of the states involved, and must also be interpreted in a broad and liberal spirit, was decided in *Tucker vs. Alexander*, 183 U.S. 424, 46 L.Ed. 264, 270, in which the court said:

> "We think, then, that the rights of the parties must be determined by the treaty, but that this particular convention being operative on both powers, and intended for their mutual protection, should be interpreted in a spirit of uberrima fides, and in a manner to carry out its manifest purpose * * * (Treaties) should be interpreted in that broad and liberal spirit which is calculated to make for the existence of a perpetual amity, so far as it can be done without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence."

Finally in this connection it may simply be said that when states enter into truck reciprocity agreements, such agreements not only purport to, but do in fact and in law limit the parties in the exercise of their powers to assess and collect fees and taxes each upon the vehicles of the other. A reciprocity agreement such as we have here between Texas and Mississippi

is of course binding upon the citizens of both states, but it is likewise binding upon each state, and upon the executive, legislative and judicial branches of each state, subject only to the power of the judiciary to interpret and construe. *81 C.J.S. 906*, States, par. 10 (c).

CONCLUSION

These questions are of such substantial importance and are of such a serious nature that this Honorable Court should grant this writ.

WHEREFORE, Petitioner prays that for all of the foregoing reasons this petition for certiorari be granted.

Copy hereof has been served upon Hon. Will Wilson, Attorney General of Texas, and his assistant, Hon. C. K. Richards, Attorneys for Respondent on this 16 day of September, 1960.

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APPENDIX "A"

No. 5394

D. C. HALL COMPANY, *Appellants.*

vs.

STATE HIGHWAY COMMISSION, *Appellee*

Appeal from the District Court of
El Paso County

OPINION

This is an appeal growing out of an action for declaratory judgment brought by the State Highway Commission, appellee herein, against appellant, D. C. Hall Company, a Delaware corporation with authority to do business in Texas; and Braswell Motor Freight Lines, Inc., a Texas corporation. Both corporations do business in Texas and each has designated 201 Raynolds Boulevard, in the City of El Paso, El Paso County, Texas, as its registered office and principal place of business in the State of Texas. Appellee sought a declaratory judgment that either D. C. Hall Company or Braswell Motor Freight Lines, Inc., must register in Texas, 95 semi-trailers owned by the Braswell Lines, but which were in the legal possession and under the legal control of appellant, D. C. Hall Company, pursuant to the terms of a lease contract between Braswell Motor Freight Lines, Inc. and the appellant.

Appellant, D. C. Hall Company, is also authorized to do business in the State of Mississippi, and maintains a place of business at Jackson, Mississippi, from

which point said semi-trailers are operated exclusively in interstate commerce to points in Texas, Oklahoma, Tennessee and Louisiana. All of the semi-trailers are registered for operation over the highways of Mississippi.

Appellee, the State of Texas, contends that, since both corporations—Braswell Motor Freight Lines, Inc. and D. C. Hall Company—are each an owner of the semi-trailers in question, and since both corporations are residents of El Paso County, Texas, the provisions of Article 6675a-2, Vernon's Texas Civil Statutes, require said semi-trailers to be registered in El Paso County, Texas. Appellant, D. C. Hall Company, contends that said semi-trailers should be registered in the State of Mississippi, where they are, in fact, registered.

The case was tried upon an agreed statement of facts, together with a limited amount of oral evidence. The trial court rendered judgment, holding the lease of said semi-trailers from Braswell Motor Freight Lines, Inc., to appellant, valid, and dismissed Braswell Motor Freight Lines, Inc. from the suit with its costs; and further held that D. C. Hall Company, being a bona fide resident of El Paso County, Texas, and the owner of said trailers, was required to register the vehicles in question in El Paso County.

Appellant filed motion for new trial and motion for additional findings of fact. Additional findings of fact were made, but the motion for new trial was overruled. Appellant except and gave notice of appeal; and, thereafter, duly perfected its appeal to this court.

Seven points of error are assigned by appellant, of which the first five have been grouped for purposes of argument in appellant's brief, and they will be discussed by us in the same manner.

The first five points each relate to the construction placed by the trial court on Article 6675a, sections 1-16 inclusive, Vernon's Texas Civil Statutes, and the reciprocity agreement between Texas and the State of Mississippi.

By Points 1-5, appellant contends that the State of Texas, by the terms of its reciprocal agreement with Mississippi, has added a substantial and vital element to the meaning of the word "resident"; and that a distinction must be made between the meaning of the word "resident" for purposes of registration of motor vehicles, and the meaning of the word "resident" as generally applied in corporate law; that appellant is a corporate resident of both Texas and Mississippi, but, for purposes of registration of its vehicles under Article 6675a, sections 1-16, V.A.T.S., and under the terms of the reciprocal agreement between Texas and Mississippi, is a resident of Texas, and is a resident of Mississippi as to such of its vehicles as are actually located in Mississippi; appellant, being a corporate resident of both states, is entitled to full benefits of reciprocity, regardless of the state in which the vehicles are registered, so long as the vehicles are registered in the State where they are actually located and stationed, because, under the statute and the reciprocity agreement there are no exclusions except as to those carriers for hire who, or which are, residents of

neither State; that appellant has both a corporate residence under generally applied corporate law and a residence based upon the location of its vehicles, for purpose of registration under the reciprocity agreement.

Article 6675a-2, Vernon's Texas Civil Statutes, provides in part:

> "Every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this State shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; . . ."

Section 16 of the same Article, in subdivision (a) thereof, provides:

> "In addition to and regardless of the provisions of this Act, or any other Act relating to the operation of motor vehicles over the public highways of this State by non-residents, the State Highway Engineer is hereby authorized to enter into agreements with duly authorized officials of other States exempting the residents of such other States using the public highways of this State from the payment of registration fees for such periods or extensions of time as may be granted residents of Texas using the public highways of such other State."

Section 2 of the above quoted statute clearly applies to "residents" of the State of Texas, and requires every such owner of a semi-trailer used or to be used

upon the public highways of this State to register each such vehicle with the State Highway Department through the County Tax Collector of the county in which he resides.

The language of Section 16 of the statute is equally clear, and is susceptible of but one meaning. It is concerned with and relates only to the operation of motor vehicles over the public highways of this State by "non-residents." It authorizes and grants authority to the State Highway Department acting by and through its State Highway Engineer, to enter into agreements with other states, exempting the "residents of such other States," using the highways of this State, from the payment of motor vehicle registration fees.

Section 16 of the statute is the power of attorney under which the State Highway Department is authorized to enter into such reciprocal agreements with other states. The State Highway Engineer's authority is limited to only such powers as are expressly conferred upon him by law, or are necessarily implied from the powers so conferred. He can no more transcend the power given by an act of the legislature to him than can the agent of an individual principal. Thus, we must look to the statute under which the officer purports to act to ascertain the extent of his authority.

We are of the opinion that the Act in question does not authorize the State Highway Department to "exempt residents of the State of Texas" from the payment of the registration fees imposed by the laws of

this State on vehicles owned or controlled by Texas residents and used or to be used upon the public highways of this State; nor is such authority necessarily implied from the powers expressly conferred.

The trial court found as a fact, and it is conceded by appellant, that D. C. Hall Company is a bona fide resident of both the State of Texas and the State of Mississippi. Consequently, it is a "non-resident" of neither state.

Reciprocity agreements between states, such as the one presented on this appeal, the terms of which need not be set out here, do not possess the dignity of treaties, nor do we agree with appellant's contention that such agreements are governed by rules of international law. The Texas-Mississippi agreement may be terminated at the will of either state on thirty days' notice. Its terms are simple and, essentially, it provides that one of the contracting states gives to the residents of the other "exemption" from the payment of vehicle registration fees, on condition that its own residents shall enjoy similar exemptions at the hands of the other.

Appellant contends that, since it is a resident of the State of Mississippi, one of the contracting states in the Texas-Mississippi reciprocity agreement, it is a "resident of such other state" within the meaning of the statute, regardless of the fact that it is also a resident of the State of Texas. Appellant argues that, since it is a resident of both states and has seen fit to register some of its vehicles "as a resident of Mississippi," in that State, it should not be required to

register the same vehicles in Texas when those vehicles reach the Texas line, just because appellant, as the owner of the vehicles, is also a resident of Texas.

While we admire the ingenious argument presented by appellant's very able counsel, we are not persuaded by it. He asks:

> "Can it be logically argued that Texas may treat a non-resident with greater consideration and cordiality than it treats one of its own residents, albeit such a one is also a resident of Mississippi?"

We think the answer to this question depends upon the application of the statute, Article 6675a, sections 1-16 inclusive, and the terms of the reciprocal agreement to each individual fact situation. Bona fide residents of Mississippi who are "non-residents" of Texas, clearly, would not be required, under the terms of the reciprocity agreement, to pay the Texas motor vehicle registration fee on vehicles owned or controlled by such persons except where such vehicles are located in Texas (the non-resident State) for thirty or more consecutive days. In the absence of any reciprocity agreement, it is equally clear that all bona fide residents of Texas who own or control vehicles used or to be used on the public highways of this State, must register and pay the fees imposed by the laws of this State on such vehicles.

We do not believe that a resident of Texas, who is required to do no more than conform to the same laws to which all other residents of Texas are subjected, may lawfully be heard to complain that he is

being discriminated against merely because the reciprocity agreement in question exempts non-residents of Texas, who are bona fide residents of the State of Mississippi, from paying the registration fees in question.

The benefits of the reciprocity agreement are not available to persons who are residents of neither of the contracting states; and, by the same token, such benefits are not available to persons who are residents of each of the contracting states.

Appellant became a resident of the State of Texas at its own request. It asked for, and was granted, the privilege of doing business in the State of Texas; it accepted this privilege and has exercised the right, but seeks to avoid the burdens incident thereto. It claims the right to be treated, not in the same manner that this State treats all other residents of Texas, but insists that the State of Texas should accord to it the exemptions this State has granted and accords to residents of the State of Mississippi under the terms of the Texas-Mississippi reciprocity agreement.

As we view it, appellant's argument is to the effect that, since it is also a resident of the State of Mississippi, it should, "as a resident of such other State," be accorded the prerogatives and privileges of a guest from Mississippi while in Texas, and deplores the fact that Texas has treated it just like "home folks" by asking that it help with the dishes after the feast. In the same breath, appellant contends that, as a "resident of Texas," Texas should not treat appellant—one of its own residents—with less consideration and cor-

diality than is extended by Texas to residents of Mississippi who are non-residents of Texas.

The purpose of reciprocity agreements is not to effect a change in the relationship between one of the contracting states and its own residents, it being neither the desire nor purpose of either of the contracting states merely to exempt its own residents from compliance with its own internal laws. It is elementary that if such were the purpose to be accomplished, it could best be done by unilateral action on the part of the legislatures of the respective states, and that no agreement to do so would be necessary.

One may not seek to acquire the benefits, alone, and thus deny or refuse to assume the burdens and responsibilities of such residence. The trial court, having found, and appellant, having conceded, that it is a bona fide resident of the State of Texas, we therefore hold that appellant may not, as a resident of this State, claim exemption from the payment of the registration fees imposed by Article 6675a, supra, and we also hold that the benefits of the Texas-Mississippi reciprocity agreement are not available to one who is a resident of both Texas and Mississippi. For the benefits to be available, such person must be a resident of one of the states and a non-resident of the other.

Hilburn v. Herrin Transp. Co., 197 S.W. 2d 149.

Appellant further contends that there is a distinction between the "corporate residence" it admits having acquired in each of the involved states (under generally applied corporate law), and a residence

based upon location of the vehicles for purpose of registration under the reciprocity agreement. We agree with appellant's contention in this respect, only to the extent that appellant would not be required to register and pay fees in Texas upon vehicles owned and controlled by it, provided such vehicles are located or domiciled in another state and are *not used or to be used upon the public highways of Texas*. A resident of Texas may not operate vehicles which are owned or controlled by him upon the public highways of this State and avoid payment of the registration fees imposed by the laws of this State, by locating such vehicles in another State.

We believe the foregoing discussion and holding disposes of all the questions raised by appellant's first five points; and, having considered each of said points, they are accordingly overruled.

By Points 6 and 7, appellant contends that, unless Article 6675a-16 and the reciprocity agreement between Texas and Mississippi are given the construction and interpretation contended for, both Section 16 of said Article and the reciprocity agreement are unconstitutional, and would result in that type of discrimination prohibited by the Fourteenth Amendment of the Constitution of the United States, and would constitute the imposition of an unlawful burden of multiple taxation on the privilege of carrying on an exclusively interstate business, which is prohibited by Article 1, Section 8, clause 3, of the Constitution of the United States.

The registration of motor vehicles operated over

public highways of Texas, whether such operation is in interstate commerce or intrastate commerce, and the payment of fees for such registration under the provisions of Article 6675a, V.A.T.C.S., is a privilege tax in the nature of a license, or toll, for the use of the public highways in Texas.

Payne v. Massey, 145 Tex. 237, 196 S.W. 2d 493.

Registration in the State of Mississippi of the vehicles of a resident of Texas does not confer upon such resident the right of the free use of the highways of this State, albeit such resident is also a resident of Mississippi.

Free use of the public highways of Texas by non-resident owners is a matter of reciprocity, and is a privilege accorded the non-resident owner whose own state accords privilege to residents of Texas.

It is well settled that the power of a state to regulate the use of motor vehicles on its highways extends to non-residents as well as residents, and that it may prohibit the use of its highways by foreign motor vehicles unless and until such vehicles are licensed in accordance with its laws. When the privilege applies equally to residents and non-residents, and to intrastate and interstate commerce alike, it is not discriminatory.

Hendrick v. Maryland, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385;

Kane v. New Jersey, 242 U.S. 160, 37 S.Ct. 30, 61 L.Ed. 222;

Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091;

Storaasli v. Minnesota, 283 U.S. 57, 51 S.Ct. 354, 75 L.Ed. 839;

State v. Garford Trucking, Inc. (N.J. S.Ct. 1950), 72 A. 2d 851, 16 A.L.R. 2d 1407.

The opinion in the Garford Trucking, Inc. case, supra, passes on the identical questions raised by appellant in its points of error numbers six and seven, and we believe the rules laid down there are applicable here. The New Jersey statute authorizing reciprocity is similar to Article 6675a-16. In that case, the court held, in part, as follows:

> "It does not matter that here the vehicle was engaged in interstate commerce. The regulation does not impose a direct and material burden on interstate commerce. It constitutes a reasonable exercise of the police power for public safety and order in a field not occupied by the Federal authority. Hendrick v. State of Maryland, 235 U.S. 610, 35 S.Ct. 140, 59 L.Ed. 385 (1914). The power of the state to regulate the use of motor vehicles on its highways extends to non-residents as well as residents, and 'includes the right to exact reasonable compensation for special facilities afforded as well as reasonable provisions to insure safety.' Kane v. State, 242 U.S. 160, 37 S.Ct. 30, 31, 61 L.Ed. 222 (1916)."

As to the contention that the registration and payment of the license fees was violative of the "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States, the court said:

> "The failure to extend the benefits of the reciprocal clause to vehicles of resident owners registered outside of the State does not constitute a denial of the equality of right guaranteed by the equal protection clause. The design of the statute is to place resident and non-resident owners upon a parity as respects the operation of motor vehicles outside of the jurisdiction of registration. The State may exempt the non-resident owner from the obligation of registration, but it is under no duty to include in that category the resident owner of vehicles registered elsewhere. There was no arbitrary selection here. The classification was based upon substantial differences related to the policy of the act and the object to be achieved, and is in no sense capricious or arbitrary. It embraces all and excludes none who naturally belong to the established classes. These are the criteria of conformance to the due process and equality clauses of the Fourteenth Amendment and the State Constitution:" (citing cases).

Having fully considered appellant's Points 6 and 7, we are of the opinion that same should be overruled. Other contentions made by appellant on this appeal, and raised in connection with the specific points already discussed, have likewise been considered, and same are overruled.

In its declaratory judgment the trial court decreed that appellant D. C. Hall Company, as the owner of the vehicles in question, and as a bona fide resident of El Paso County, Texas, is required to register with, and pay the registration fee on, said vehicles to the Tax Collector of El Paso County, Texas. In its findings of fact and conclusions of law, the trial court

found that appellant was a resident, not only of El Paso County where it maintained its principal office, but also of Dallas and Tarrant counties, and that Appellant could, at its option, register the vehicles in question in any of the counties in Texas of which it was a resident.

In Texas Highway Department v. Kimble County, 239 S.W. 2d 831, the Court of Civil Appeals held that a person, including a corporation, may reside in more than one county; and, in the event the owner resides in more than one county, registration in either county would be valid. In order that the judgment of the trial court may conform to the holding in the Kimble County case, the judgment is modified so as to require appellant to register the vehicles in El Paso County, or, at its option, in any of the counties in Texas of which it is a resident.

Except as modified above, the judgment of the trial court is affirmed.

s Jim C. Langdon
Chief Justice

Opinion Filed Dec. 16, 1958.

APPENDIX "B"

ART. 6675a-1. Definitions of Terms

The following words and terms, as used herein, have the meaning respectively ascribed to them in this Section, as follows:

(a) "Vehicle" means every device in, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved only by human power or used exclusively upon stationary rails or tracks.

(b) "Motor Vehicle" means every vehicle, as herein defined, that is self-propelled.

(c) "Motor Cycle" means every motor vehicle designed to propel itself on not more than three wheels in contact with the ground.

(d) "Truck-tractor" means every motor vehicle designed or used primarily for drawing other vehicles, and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(e) "Farm-tractor" means every motor vehicle designed and used primarily as a farm implement for drawing other implements of husbandry.

(f) "Road-tractor" means every motor vehicle designed or used for drawing other vehicles or loads, and not so constructed as to carry a load independently or any part of the weight of the drawn load or vehicle.

(g) "Trailer" means every vehicle designed or used

to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(h) "Semi-trailer" means vehicles of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

(i) "Commercial Motor Vehicle" means any motor vehicle (other than a motorcycle or passenger car) designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is being used, primarily for delivery purposes, with the exception of passenger cars used in the delivery of the United States mails. As amended Acts 1941, 47th Leg., p. 144, ch. 110, § 1.

(j) "Passenger Car" means any motor vehicle other than a motor cycle or a bus, as defined in this Act, designed or used primarily for the transportation of persons.

(k) "Department" means the State Highway Department or its duly authorized officers or agents.

(l) "Owner" means any person who holds the legal title of a vehicle or who has the legal right of possession hereof, or the legal right of control of said vehicle.

(m) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled for the use of vehicles over which the State has legislative jurisdiction under its police power.

(n) "Motor Bus" shall include every vehicle, except those operated by muscular power or exclusively on stationary rails or tracks, which is used in transporting persons upon the public highways of this State for compensation (or hire) whether operated over fixed routes or otherwise; except such of said vehicles as are operated exclusively within the limits of incorporated cities and or towns or suburban additions to such cities and or towns. As amended Acts 1947, 50th Leg., p. 1013, ch 431. § 1.

(o) "Farm-trailer" means every "trailer" as defined in Subsection (g) herein, designed and used primarily as a farm vehicle.

(p) "Farm-semi-trailer" means every semi-trailer as defined in Subsection (h) herein, designed and used primarily as a farm vehicle.

(q) By "operated or moved temporarily upon the highways" is meant the operation or conveying between different farms, and the operation or conveyance from the owner's farm to the place where his farm produce is prepared for market or where same is actually marketed and return.

(r) "Implements of husbandry" shall mean farm implements, machinery and tools as used in tilling the soil, but shall not include any passenger car or truck.

(s) "Street or suburban bus" shall include every vehicle, except a motor bus or passenger car as defined in this Act, which is used in transporting persons for compensation (or hire) exclusively within the limits

of cities and towns or suburban additions to such cities or towns.

ART. 6675a-2. Registration

Every owner of a motor vehicle, trailer or semi-trailer used or to be used upon the public highways of this state shall apply each year to the State Highway Department through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof; provided, that where a public highway separates lands under the dominion or control of the owner, the operation of such a motor vehicle by such owner, his agent or employees, across such highway shall not constitute a use of such motor vehicle upon a public highway of this state. Owners of farm tractors, farm trailers, farm semi-trailers, implements of husbandry and machinery used solely for the purposes of drilling water wells or construction machinery (not designed for the transportation of persons or property on the public highways) operated or moved temporarily upon the highways shall not be required to register such farm tractors, farm trailers, farm semi-trailers, implements of husbandry, well-drilling and construction machinery; provided, however, that such farm trailers and farm semi-trailers are operated in conformity with all provisions of the law, save and except the requirements as to registration and license; and provided further, that the exemptions in this Section shall not apply to any farm trailer or farm semi-trailer when the gross weight exceeds four thousand

(4,000) pounds; provided, that no farm trailer or farm semi-trailer with metal tires shall be permitted to operate at a speed in excess of fifteen (15) miles per hour; and further provided, that the exemption in this Section shall not apply to any farm trailer or farm semi-trailer with steel tires of a width less than three (3) inches operating in excess of fifteen (15) miles per hour; and provided further, that the exemption in this Section shall not apply to any farm trailer or farm semi-trailer when the same is used for hire; provided, however, it shall be unlawful to operate any trailer or semi-trailer at night without a rear red light or red reflectors.

ART. 6675a-6. Fees; commercial motor vehicles or truck-tractors

The annual license fee for the registration of a commercial motor vehicle or truck tractor shall be based upon the gross weight and tire equipment of the vehicle as follows:

Gross Weight in Pounds	Fee per 100 Pounds or Fraction Thereof: Equipped with Pneumatic Tires	Equipped with Solid Tires
1-6,000	$ .44	$ .55
6,001-8,000	.495	.66
8,001-10,000	.605	.77
10,001-17,000	.715	.88
17,001-24,000	.77	.99
24,001-31,000	.88	1.10
31,000-and up	.99	1.32

The term "gross weight" as used in this Section shall mean the actual weight of the vehicle fully equipped with body, and other equipment, as certified by an official Public Weigher or any License and Weight Inspector of the State Highway Department, plus its net carrying capacity. "Net carrying capacity" of any vehicle except a bus, as used in this Section, shall be the weight of the heaviest net load to be carried on the vehicle being registered; provided said net carrying capacity shall in no case be less than the manufacturer's rated carrying capacity. The "net carrying capacity" of a bus as defined in this Act shall be computed by multiplying its seating capacity by one hundred and fifty (150) pounds. The seating capacity of any such vehicle shall be the manufacturer's rated seating capacity exclusive of the driver's or operator's seat. The seating capacity of any such vehicle not rated by the manufacturer shall be determined by allowing one (1) passenger for each sixteen (16) inches that such vehicle will seat, exclusive of the driver's or operator's seat.

ART. 6675a-8c. Diesel Motors, vehicles propelled by; fee; license receipts to show type of motor

It is expressly provided that the license fees for all vehicles using or being propelled by diesel motors or engines shall be the fees provided in other sections of this Act plus an additional eleven per cent (11%). It is further provided that the County Tax Collector, in issuing the license receipts for motor vehicles provided for in this Act, shall clearly indicate on the

license receipt the type of motor by which the vehicle is propelled when such motor is powered by diesel fuel, butane gas, or any distillate other than gasoline.

ART. 6675a-16. Agreement with other states regarding exemption from registration fees; punishment for violation

(a) In addition to and regardless of the provision of this Act, or any other Act relating to the operation of motor vehicles over the public highways of this State by non-residents, the State Highway Department acting by and through the State Highway Engineer is hereby authorized to enter into agreements with duly authorized officials of other States exempting the residents of such other States using the public highways of this State from the payment of registration fees for such periods or extensions of time as may be granted residents of Texas using the public highways of such other State.

(b) This section shall be cumulative of all other laws on this subject, but in the event of a conflict between the provisions of this section and any other Act on this subject, the provisions of this section shall prevail.

(c) Any person owning or operating a vehicle not registered in this State, in violation of the terms of any agreement made under this section, or in the absence of any agreement, in violation of the applicable registration laws of this State, shall be guilty of a misdemeanor and upon conviction shall be fined any sum not exceeding Two Hundred ($200.00) Dollars.

APPENDIX "C"

MOTOR VEHICLE RECIPROCITY AGREEMENT BETWEEN THE STATE OF TEXAS AND THE STATE OF MISSISSIPPI

Pursuant to and in conformity with the laws of their respective states, the State of Texas and the State of Mississippi, acting by and through their lawful authorized officials to execute this agreement, do mutually agree as follows:

I.

It is provided that this agreement applies only to the requirement for licensing of vehicles, operated in interstate commerce exclusively, and shall not relieve any non-resident operator or owner of such vehicles from complying with all laws and regulations exercised by either state under their respective statues for common and contract carriers; and shall apply only to bona fide residents of the herein contracting states. It is further provided that no non-resident of Texas or Mississippi shall avail themselves of the benefits of this reciprocal agreement by the licensing of their vehicles in either state without having become a bona fide resident thereof.

II.

Any person, firm or corporation that was legally entitled to the benefits of this agreement on July 1, 1946, shall not receive the benefits of this agreement if he moves his legal residence, principal and general

office from either state to the other until after the expiration of one year from the date he becomes a legal resident and opens his principal and general office in the state into which he has moved. It is further provided that no dissolution or reorganization under which the old person, firm, corporation, family or entity attempts to operate under a new or similar trade or corporate name shall be entitled to receive the benefits of this agreement if the new organization moves from either state to the other until after the expiration of one year from the date the new organization or entity becomes a legal resident and opens his principal and general office in the State into which he has moved.

III.

PRIVATE PASSENGER CARS

Private passenger motor vehicles properly licensed in the State of which the owner is a legal and bona fide resident shall be granted full reciprocity in the lawful use of the highways of both states; provided, however, the establishment of a domicile or place of abode and while gainfully employed within the reciprocating state for a consecutive period of thirty (30) days shall be deemed the establishment of a residence within said state for the purpose of motor vehicle registration. Provided, however, the non-resident owner of a personal passenger car who is a member of the Military or Naval Forces of the United States on duty within such state, and whose personal passenger automobile is properly registered for the current registration year in his resident state, shall be extended

full reciprocal privileges. It is further provided that traveling salesmen, solicitors, or peddlers carrying merchandise in such motor vehicle and using such motor vehicle for transporting such merchandise for the purpose of selling, peddling, or otherwise similarly disposing of such merchandise, shall not be extended this reciprocal privilege.

IV.

PRIVATE COMMERCIAL TRUCKS AND COMMON OR CONTRACT CARRIERS

Owners and operators of trucks, truck-tractors, trailers, or semi-trailers used for the transportation of the actual property of the owner of such vehicles and for the transportation of property for compensation and or hire who are legal and bona fide residents of Texas or Mississippi and who have legally registered such vehicles in the state of which the owner is a resident and have complied with all laws regulating common and contract carriers and secured permits from the Texas Railroad Commission and from the Public Service Commission of Mississippi are granted full reciprocity in the lawful use of the highways of the other state party to this agreement without payment of motor vehicle license fees in such other state; provided, however, that if any truck, truck-trailer, trailer, or semi-trailer is located in the non-resident state party to this agreement for thirty (30) or more consecutive days it shall be conclusively presumed that the location of the vehicle has been changed and the owner or operator shall be required

to register such vehicle in the non-resident state. It is further provided that any truck, truck-tractor, trailer, or semi-trailer which is registered in one state if moved to and located in the other state for thirty (30) or more consecutive days shall be required to be registered in the state to which moved.

V.

DEALERS AND MANUFACTURERS

Reciprocity is granted to dealers and manufacturers properly registered in their resident state to travel over the public highways of either state; provided, however, that such travel is strictly limited to movement by dealers and manufacturers of their own cars from factory to dealer's place of business, from distributor to a dealer, or from a dealer to another dealer, and that each such motor vehicle moved in this manner shall have dealer's or manufacturer's license tag or identification issued to him in his resident state affixed securely to such motor vehicle moving over said public highways.

VI.

Reciprocity is granted to motor vehicles owned by all schools and colleges, religious or charitable associations or institutions, or governmental agencies but not operated for hire, when used to convey their athletic teams, orchestras, or other scholastic, religious, or charitable organizations or employees for temporary trips to either state; and provided that such reciprocity shall not be construed to apply to motor

vehicles or buses that operate on a fixed schedule through either state for compensation or for hire.

VII.

It is further provided that, as to each individual operator or carrier, this agreement and the extension of reciprocity under the terms hereof is based upon the requirement that such operator or carrier will purchase, or pay the state tax upon, a sufficient amount of gasoline or other fuel to propel their vehicles for the number of miles travelled upon the highways of state granting reciprocity, and, as to the State of Mississippi, is based upon compliance with the terms and provisions of House Bill No. 128 of the Mississippi Laws of the Regular Session of 1946.

VIII.

It is provided that each state reserves the right to cancel the benefits of this agreement as to any individual operator, owner or carrier if any requirements of this agreement are not complied with.

IX.

This agreement shall not be construed to authorize the operation of motor vehicles upon the highways of either of the states in excess of the maximum weight, length, width, or height allowed by the laws of such state in which such vehicle is being operated. All operators of vehicles carrying licenses of either of the states entering into this agreement, shall operate under the laws and conform to the regulations governing the operation of motor vehicles in the state where

they are being operated, and failure to do so shall subject operators of such motor vehicles to prosecution and fine under the laws of the state in which they are operating.

X.

This agreement shall not affect any reciprocal agreement Texas or Mississippi may make or enter into with any other state.

XI.

Each of the contracting parties of each state shall cooperate with each other and hereby agree to furnish such aid and assistance to the other as may be within their statutory authority as will aid in the proper enforcement of this agreement, and to carry out the purposes of their Legislative Acts pursuant to which this agreement has been made.

XII.

This agreement shall become effective April 1, 1946, and shall continue in full force thereafter until modified or cancelled by either party upon thirty (30) days written notice; and provided further that it shall remain at all times subject to any alterations or modifications which may be made by the Legislative Enactment in either state.

XIII.

This agreement revokes any and all reciprocal agreements on this subject now in effect between the State of Texas and the State of Mississippi.

IN WITNESS WHEREOF, the State of Texas and the State of Mississippi, each acting by and through its duly authorized officials have executed this agreement on this the 1st day of April, A. D., 1946.

STATE OF TEXAS

By: /s/ D. C. Greer
D. C. Greer
State Highway Engineer
State Highway Department
Motor Vehicle Comptroller

STATE OF MISSISSIPPI

By: /s/ F. S. Wright
Lt. & Acting Governor

By: /s/ Joe B. Keith
Asst. Motor Vehicle
Comptroller

By: /s/ Greek L. Rice
Attorney General

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 421

D. C. HALL COMPANY,

Petitioner,

vs.

THE HIGHWAY COMMISSION OF TEXAS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATE HIGHWAY COMMISSION OF TEXAS,
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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondent, State Highway Commission of Texas, respectfully files this Brief in Opposition to the Petition for Writ of Certiorari.

OPINION OF THE COURT BELOW

The opinion of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas (reported in 330 S.W.2d 904), the review of which is sought herein, appears as Appendix "A", pages 36-49 of the Petition for Writ of Certiorari.

JURISDICTION

Petitioner, having exhausted all of its remedies in the courts of Texas, seeks to invoke jurisdiction of this Court under 28 U.S.C. 1257(3). Respondent contends that there are no special or important reasons presented herein for granting the writ of certiorari by this Court under Rule 19(1)(a), Supreme Court Rules.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 10, Clause 3 of the Constitution of the United States, the *compact* clause;

Article I, Section 8, Clause 3 of the Constitution of the United States, the *commerce* clause;

Fourteenth Amendment to the Constitution of the United States, the *due process* and *equal protection* clauses;

Article 6675a, Sections 1, 2, and 16, Vernon's Texas Civil Statutes (Appendix "B", Petition for Writ of Certiorari, pp. 50-56).

STATEMENT OF THE CASE

Respondent adopts the statement of the case in the opinion of the court below (Appendix "A", Petition for Writ of Ceritorari, pp. 36-37).

ARGUMENT

Respondent urges that there is no substantial Federal question presented for review or determi-

nation by this Court in the Petition for Certiorari (pp. 2-4), which has not already been determined heretofore by this Court or which has not been heretofore decided in accordance with the applicable decisions of this Court.

(1) The construction and interpretation by the State courts of Texas of the Texas Highway Vehicle License Statute, Article 6675a, V.T.C.S., as applied to the Reciprocity Agreement between the States of Texas and Mississippi does not violate Article I, Section 8, Clause 3 (the commerce clause) of the Constitution of the United States.

Petitioner contends that since the highway vehicle license fee imposed by Article 6675a-2, Vernon's Texas Civil Statutes, is, in law, an occupation tax, it constitutes a direct burden upon interstate commerce prohibited by the commerce clause of the Federal Constitution and, as such, would result in multiple taxation of the privilege of doing an exclusively interstate transportation business by motor vehicle, also prohibited by the commerce clause of the Federal Constitution. Petitioner erroneously assumes that the highway vehicle license or registration fee is, in law, an occupation tax.

The registration of motor vehicles operated over the highways of Texas, whether such operation is in interstate or intrastate commerce, and the payment of the fees for such registration under the provisions of Article 6675a-2, V.T.C.S., is a privilege tax in the nature of a license or toll for the

use of the highways of Texas, *Payne v. Massey*, 145 Tex. 237, 196 S.W.2d 493, 495 (1946); *County of Harris v. Sheppard*, 156 Tex. 18, 291 S.W.2d 721, 726 (1956), and is not a tax upon the occupation or business of transportation by motor vehicle for hire for the purpose of raising revenue, but is a license fee under police regulation governing the use of the public highways of Texas, *Atkins v. State Highway Department*, 201 S.W. 226, 229 (Tex. Civ. App. 1918).

This Court has uniformly held that a State may levy a fair and reasonable non-discriminatory tax or license fee as compensation for the use of its highways upon motor vehicles engaged exclusively in interstate commerce or upon their owners or operators, *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U.S. 495, 503; *Bode v. Barrett*, 344 U.S. 583, 585.[1]

Petitioner's contention that the reciprocal agreement between the States of Texas nad Mississippi has substituted the fuel tax for the registration or license fee as provided in Section VII of the reciprocal agreement (Appendix "C", p. 61), has already been decided adversely to petitioner in *Aero Mayflower Transit Co. v. Board of Railroad Commissioners of Montana*, 332 U.S. at page 502.

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[1] *Hendrick v. Maryland*, 235 U.S. 610; *Aero Mayflower Transit Co. v. Georgia Commission*, 295 U.S. 285; *Morf v. Bingaman*, 298 U.S. 407; and *Clark v. Paul Gray, Inc.*, 306 U. S. 583.

Prior decisions of this Court have consistently held that the police power of a State to regulate the use of motor vehicles upon its highways extends to non-residents, and that it may prohibit the use of its highways for a foreign motor vehicle unless and until it is licensed in accordance with its laws, and because the privilege or license tax or fee applies equally to residents and non-residents, it is not discriminatory. *Hendrick v. Maryland*, 235 U.S. 610, *Kane v. New Jersey*, 242 U.S. 160; *Storaasli v. Minnesota*, 283 U.S. 57; *Bode v. Barrett*, 344 U.S. 583, 586. Since the incidence of the tax is not directed to the occupation or business of engaging in motor vehicle interstate transportation for hire, no issue of unreasonable burden on interstate commerce is presented, *Bode v. Barrett*, 344 U.S. 585, and hence the decisions in *Spector Motor Service v. O'Conner*, 340 U:S. 602, and *Railway Express Agency v. Virginia*, 347 U.S. 359 are not in point. The taxable incidence of the registration fee in *each* state being based upon the privilege of the use of the highways of *each* state, there can be no multiple tax burden on interstate commerce as held in *Michigan-Wisconsin Pipeline Co. v. Calvert*, 347 U.S. 157.

(2) Since the reciprocal agreement between the States of Texas and Mississippi is not a compact or treaty comprehended by Article I, Section 10, Clause 3 of the Constitution of the United States, no Federal question is presented.

In the second question presented for review petitioner contends that the reciprocal motor vehicle

registration agreement between the States of Texas and Mississippi (Appendix "C", Petition for Certiorari, p. 59), is a compact or treaty formally entered into between the states which should be construed under the principles of international law or conflict of laws. In support of this contention petitioner relies principally upon *Virginia v. Tennessee*, 148 U.S. 518, which decision is based upon the interpretation that an "agreement" between the states has the same effect as a "compact" or "treaty" between the states under Article I, Section 10, Clause 3 of the Constitution of the United States.

However, petitioner concedes that truck reciprocity agreements such as are involved herein have "never been thought to violate the compact clause of Article I, Section 10 of the Constitution", *Bode v. Barrett*, 344 U.S. 586.[3] Nor does the correctness of the decision of the court below depend upon the existence of the reciprocity agreement which is to be interpreted in the light of the state statutes and not by the principles of international law or conflict of laws, *Kane v. New Jersey*, 242 U.S. 168. Hence, no Federal question is presented for determination by this Court.

Petitioner's additional contention that Section 16, Article 6675a, V.T.C.S., nullifies all other sections

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[3] *Dixie Wholesale Grocery, Inc. v. Martin*, 278 Ky. 705, 129 S.W.2d 181, 184 (Ky. Court of Appeals, 1939); *Duncan v. Smith*, 262 S.W.2d 373, 377 (Ky. Court of Appeals 1953); *State v. Lauridsen*, 312 S.W.2d 140, 143 (Mo. Supreme Court, 1958); *Bode v. Barrett*, 412 Ill. 204, 106 NE.2d 521, aff. *Bode v. Barrett*, 344 U.S. 583.

and provisions of Article 6675a, is without merit, since Section 16(b), Article 6675a, specifically provides that Section 16 shall be "cumulative" of all other laws. It therefore cannot be contended seriously that in using the word "cumulative" the Legislature intended to repeal, revoke, and "void" all of the other provisions of Article 6675a-1 to 6675a-15, inclusive.

In this connection the attention of the Court is respectfully directed to Paragraph XII of the reciprocity agreement (Appendix "C", Petition for Certiorari, p. 62), providing for the modification or cancellation of the agreement by either party upon thirty days written notice, and further providing that the agreement shall remain at all times subject to any alterations or modifications which may be made by legislative enactment in either state. Manifestly, where an agreement may be terminated upon thirty days written notice by either party thereto *without cause*, and the terms of which are subject to alteration or modification by the Legislature of either state party thereto, such agreement cannot be dignified as a "treaty" or a "compact" which is subject to international law as contemplated by the cases cited by petitioner.

CONCLUSION

Since there is no substantial Federal question presented for review which has not already been determined heretofore, or which has not been decided in accordance with the applicable decisions

of this Court, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Certificate of Service

I, C. K. Richards, Assistant Attorney General of Texas, am a member of the Bar of the Supreme Court of the United States, and I now enter my appearance in the Supreme Court of the United States in the above captioned cause in behalf of respondent. I do further certify that copies of the foregoing brief have been forwarded by United States Air Mail, postage prepaid, to petitioner's attorneys, M. Ward Bailey and T. S. Christopher, 807 Continental Life Building, Fort Worth 2, Texas.

C. K. Richards
Assistant Attorney General of Texas